

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

20-CR-6032 (DGL)

vs.

MICHAEL TYO,  
Defendant.

Rochester, New York  
July 7, 2022  
11:20 a.m.

-----x  
**SENTENCING**

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE DAVID G. LARIMER  
UNITED STATES DISTRICT JUDGE

TRINI E. ROSS, ESQ.  
United States Attorney  
BY: KATELYN E. HARTFORD, AUSA  
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Rochester, New York 14614

FOR DEFENDANT: THE SCIBETTA LAW OFFICE  
BY: MICHAEL P. SCIBETTA, ESQ.  
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ALSO PRESENT: JENNIFER FISH, U.S. PROBATION OFFICER

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P R O C E E D I N G S

\* \* \*

(WHEREUPON, the defendant is present.)

**THE COURT:** Good morning, Mr. Scibetta.

**MR. SCIBETTA:** Good morning, Judge.

**MS. HARTFORD:** Good morning, your Honor.

**THE COURT:** Ms. Hartford.

And Mr. Tyo.

**THE DEFENDANT:** Good morning.

**THE COURT:** The matter is scheduled for sentencing today based on Mr. Tyo's plea to a plea agreement almost a year -- almost two years ago in July of 2020.

Parties ready to proceed?

**MS. HARTFORD:** Yes, your Honor.

**THE COURT:** The Court is, as well.

A few matters to discuss. But, as I said, Mr. Tyo pleaded guilty to a three-count information charging two bank robberies and an attempted robbery back in August of 2019.

By statute, each of those crimes carry a potential maximum sentence of up to 20 years in prison.

There was a plea agreement.

The first robbery related to a Citizens bank in Rochester on South --

**THE DEFENDANT:** Can I -- sorry to interrupt you. I had

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11:22AM 1 a meeting with, with a new lawyer yesterday, Jason Abbott. I  
2 don't know if you received an email from him.

3 **MR. SCIBETTA:** I didn't get an email from Mr. Abbott. I  
4 did speak to him this morning.

11:22AM 5 **THE COURT:** I'm sorry?

6 **THE DEFENDANT:** Spoke to him.

7 My other attorney that was supposed have happened, she's  
8 not responding to my calls any more. I'm still, I'm still  
9 trying to have another motion filed. I have almost retained  
11:22AM 10 this lawyer. Aid I had a --

11 **THE COURT:** Almost retained doesn't count for much.  
12 So what are you saying to me?

13 **THE DEFENDANT:** I would like to file a second motion to  
14 take the plea back. And I should have new counsel very soon.

11:23AM 15 **THE COURT:** Well, you said that a month ago. You had  
16 this woman.

17 **THE DEFENDANT:** That's something I --

18 **THE COURT:** You --

19 **THE DEFENDANT:** That should have already happened but  
11:23AM 20 external circumstances I can't control.

21 **THE COURT:** If she exists.

22 **THE DEFENDANT:** She exists.

23 **THE COURT:** She has not filed anything and she lives in  
24 Puerto Rico apparently.

11:23AM 25 **THE DEFENDANT:** But she's out of the picture now because

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11:23AM 1 she's not picking up my calls.

2 **THE COURT:** Well, there may be a reason for that. No.  
3 This matter's been set for sentencing. It has been adjourned  
4 and it's been adjourned --

11:23AM 5 **THE DEFENDANT:** I have --

6 **THE COURT:** And I just get the feeling you don't want to  
7 be sentenced. You filed motions --

8 **THE DEFENDANT:** I want to take this plea back, sir.

9 **THE COURT:** You filed a motion to withdraw the plea. We  
11:23AM 10 had a hearing on it and I denied the motion. And I can't  
11 think of anything that's going to change my mind if you file  
12 a second or third motion.

13 **THE DEFENDANT:** Yeah but the motion wasn't, it didn't  
14 have everything that I was -- that was supposed to have been  
11:24AM 15 there.

16 **THE COURT:** Well --

17 **THE DEFENDANT:** There's a myriad of different things  
18 that should have been in that motion.

19 **THE COURT:** Well, that should have been raised by you or  
11:24AM 20 by somebody at the time the motion was argued.

21 **THE DEFENDANT:** I have raised my --

22 **THE COURT:** It was argued.

23 **THE DEFENDANT:** -- my concerns. Obviously a I need new  
24 representation to --

11:24AM 25 **THE COURT:** No. The Court went through in that motion

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11:24AM 1 extensive reasons why the Court was denying the motion in  
2 terms of the timeliness of its filing and the detailed plea  
3 agreement and the admissions you made at the time. So the  
4 Court denied that motion. Mr. Tyo --

11:24AM 5 **THE DEFENDANT:** I mean, this would just save a lot of  
6 time not having to appeal it.

7 **THE COURT:** Mr. Tyo, you feel compelled to interrupt me.  
8 I'll hear what you have to say but when I'm speaking --

9 **THE DEFENDANT:** Yes, sir. Yes, sir.

11:24AM 10 **THE COURT:** -- courtesy would demand that you listen.

11 The Court ruled on that extensively. If you feel  
12 aggrieved, I guess you can seek to appeal that at the time.

13 But I see no reason to adjourn a sentence with this --  
14 it's later than an 11th hour request for an adjournment. You

11:25AM 15 know, you were directed, this woman that you mentioned, she  
16 was directed, if she was going to represent you, to file a  
17 letter. And that applies to any new counsel.

18 This is your second lawyer now. Mr. Ciccone, who  
19 represented you before, is not here. Mr. Scibetta, a very  
11:25AM 20 able counsel who's appeared in this court many times, is here  
21 to represent you. And we are proceeding with the sentence  
22 today.

23 Understood?

24 **THE DEFENDANT:** I mean, does anything I have to say  
11:25AM 25 matter?

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11:25AM 1       **THE COURT:** In terms of adjourning the sentence, no.  
2 We're going ahead. I mean, this thing's been pending for  
3 over two years.

4       **THE DEFENDANT:** I want to write -- I want a motion to be  
11:25AM 5 filed that is, that has all the myriad things that should  
6 have been in there the first time. I'm not asking for an  
7 above and beyond. I'm -- I just want to file another motion.  
8 And I have a new -- I'm about to retain new counsel.

9       **THE COURT:** You've been telling me --

11:26AM 10       **THE DEFENDANT:** I realize this has been a dragged-out  
11 thing and I really -- you're probably sick of seeing my face  
12 at this point. I probably would be, as well. But I really  
13 want to be able to file a motion that has everything that's  
14 supposed to be in there, rather than have to put this in an  
11:26AM 15 appeal. Just saves everybody time to let me retain this new  
16 counsel.

17       **THE COURT:** No.

18       **THE DEFENDANT:** I --

19       **THE COURT:** Denied. You have counsel. This is the  
11:26AM 20 second lawyer. You have filed that motion. You've not  
21 indicated to me -- you know, you could have sent me a letter,  
22 saying, judge, here's a new motion I want to file.

23       **THE DEFENDANT:** I don't know your address. I didn't  
24 even know that was a possibility. Can you give me one week  
11:26AM 25 to send you that. I don't even have your address. I can't

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11:27AM 1 get a hold of my lawyer. I can't even call this man. And I  
2 don't have any resentment with him personally but business  
3 wise, in terms of this whole juncture, I can't even get a  
4 hold of him. And I'm not trying to raise my voice or have  
11:27AM 5 any disrespect towards you.

6 **THE COURT:** Yeah, you are.

7 **THE DEFENDANT:** It's just the situation I feel like I  
8 should be able to write a real motion, rather than have a  
9 motion that's already written just to get denied. He  
11:27AM 10 probably just wanted me off the docket. I probably would  
11 want me off the docket, too. And I don't have no resentment  
12 toward anybody here. But I feel like I should be able to  
13 write a real motion to take back this plea that I think has a  
14 laundry list of things wrong with it.

11:27AM 15 **THE COURT:** All right. Mr. Tyo, you don't have to raise  
16 your voice.

17 **THE DEFENDANT:** I'm not trying to raise my voice.

18 **THE COURT:** I understand.

19 **THE DEFENDANT:** That was not my intention.

11:27AM 20 **THE COURT:** Well, you are.

21 I don't know how many times I can say it. A motion was  
22 filed on your behalf to withdraw the plea. I went through a  
23 lengthy list of why that motion was not proper. Making a  
24 motion to withdraw a plea that was made in open court under  
11:28AM 25 oath --

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11:28AM 1           **THE DEFENDANT:** No, it was not made in open court. It  
2 was on a Zoom conference that my face does not even appear  
3 on.

4           **THE COURT:** You're right. It was a court appearance but  
11:28AM 5 in light of the pandemic, it was in a Zoom.

6           **THE DEFENDANT:** Yeah. And this pandemic has a laundry  
7 list of things wrong with the whole -- how everything was  
8 conducted.

9           **THE COURT:** No.

11:28AM 10           **THE DEFENDANT:** And it would just be a lot easier for  
11 everybody if you would give me a possibility to write another  
12 motion. I'll write it myself if I can't -- but I'm going to  
13 retain this lawyer. I have the money now. I just sold my  
14 car.

11:28AM 15           **THE COURT:** Well, we are proceeding to sentence. Your  
16 request to adjourn the sentence, it appears to me you've been  
17 interested in adjourning this sentence several times. We  
18 appeared a month ago.

19           **THE DEFENDANT:** That wasn't enough time. I told you  
11:28AM 20 before that that wasn't going to be enough time.

21           **THE COURT:** Mr. Tyo.

22           **THE DEFENDANT:** It's out of my control but what --

23           **THE COURT:** Mr. Tyo.

24           **THE DEFENDANT:** -- I told a friend -- she used to be a  
11:28AM 25 good friend of mine. Now she just ghosted me and I can't



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11:28AM 1 control this. And probably seems out of the realm of  
2 possibility that that even was real but it was. She -- I had  
3 multiple conversations with her. She was going to come back.  
4 She said she'd been wanting to have -- to have a doorway to  
11:29AM 5 get into federal experience for the longest time. She is  
6 working for her family.

7 **THE COURT:** I'm not sure this would have been the best  
8 way --

9 **THE DEFENDANT:** At least I can trust her. At least I  
11:29AM 10 know, like, I mean, if -- I have the money. I can retain  
11 this lawyer. I just need a little bit more time and I'm  
12 really not trying to appear disrespectful. I'm really not.

13 **THE COURT:** Mr. Tyo, I deny your request for another  
14 adjournment to get another lawyer to file another motion  
11:29AM 15 that's already been denied.

16 We are proceeding to sentence. End of discussion.

17 I think I was describing the types of bank robberies,  
18 Citizens Bank in Buffalo is the second robbery that Mr. Tyo  
19 engaged in. Removed \$1,800 from the tellers there after some  
11:30AM 20 threats.

21 Same day attempted to rob another bank up in Buffalo,  
22 Niagara Falls Boulevard but did not receive any money.

23 The plea agreement, which was a thorough document,  
24 reviewed the facts.

11:30AM 25 The parties agree that the base offense level would be

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11:30AM 1 20. There would be a 2-point enhancement for robbing a  
2 federal institution.

3 There would be another 2-point enhancement because there  
4 was a threat of death.

11:30AM 5 Because there were multiple crimes, there was some  
6 so-called grouping.

7 But the result was that the Guideline range for Mr. Tyo,  
8 with a very high criminal history of V, was 92 to 115 months.

9 Turns out the presentence report determined that the  
11:31AM 10 Guideline range was somewhat higher, based on an analysis of  
11 Mr. Tyo's lengthy criminal history. The presentence report  
12 indicated that the Guideline range should be 100 months to  
13 125 months.

14 So that's where we are in terms of the Guidelines.

11:31AM 15 The Court will acknowledge I did receive from Mr.  
16 Ciccone, prior counsel, a statement with respect to  
17 sentencing factors indicating there were no objections to the  
18 presentence report. That was filed back over a year ago on  
19 March 3, 2021. Importantly, that letter contained  
11:32AM 20 several letters of support by various friends and associates  
21 of Mr. Tyo.

22 The plea agreement did provide, although the Guidelines  
23 were 92 to 115 months, the plea agreement provided for the  
24 right to ask for a sentence outside the Guidelines, which is  
11:32AM 25 what Mr. Ciccone requested. It was a detailed filing which I

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11:32AM 1 have reviewed then and I have reviewed again.

2 When Mr. Ciccone was relieved. Mr. Scibetta helpfully  
3 stepped in.

4 And I think, Mr. Scibetta, you indicated to the Court in  
11:33AM 5 a filing that you had no additional objections or matters  
6 relating to the presentence report; is that correct?

7 **MR. SCIBETTA:** That's correct, Judge.

8 **THE DEFENDANT:** I don't even think I had a presentence  
9 report. It came and then it left. Said I couldn't do it  
11:33AM 10 that day.

11 **THE COURT:** Well, I was about to get to that.

12 The government has also filed an amended statement with  
13 respect to sentencing factors indicating it's bound by the  
14 Guidelines in the plea agreement but noted there was an  
11:33AM 15 overlap of some months.

16 So, Mr. Tyo, the rules require that I make sure you have  
17 received a copy of the presentence report and have reviewed  
18 it and have no objections to it.

19 A I have not received a copy of the presentence  
11:34AM 20 report and I have massive objections to it.

21 **THE COURT:** Well, are you saying neither Mr. Ciccone nor  
22 Mr. Scibetta gave you a copy of the presentence report or  
23 discussed it?

24 **THE DEFENDANT:** No.

11:34AM 25 **THE COURT:** You never got one from Mr. Ciccone?

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11:34AM 1 **THE DEFENDANT:** Mm-mm.

2 **THE COURT:** I think he reference that.

3 **PROBATION OFFICER FISH:** Judge, if I could briefly.

4 Judge, A copy of the original presentence report was

11:34AM 5 mailed to the defendant at the Monroe County jail

6 December 7th, 2020.

7 And a copy of the revised presentence report was mailed  
8 to the defendant at the Monroe County jail on March 10th,  
9 2021.

11:35AM 10 **THE COURT:** This is the first time, Mr. Tyo, once again,  
11 you indicating you didn't receive something and probation  
12 routinely sends this --

13 **THE DEFENDANT:** I never received it.

14 **THE COURT:** -- to individuals.

11:35AM 15 **THE DEFENDANT:** How am I supposed to know about  
16 theoretical probation sending a presentence report?

17 **THE COURT:** Mr. Tyo, when I'm talking, please wait.

18 There's a presumption of regularity when probation mails  
19 things to inmates and since you're obviously trying to dodge  
11:35AM 20 having sentencing today.

21 **THE DEFENDANT:** I'm trying to --

22 **THE COURT:** And Mr. Scibetta --

23 **THE DEFENDANT:** -- file another motion.

24 **THE COURT:** I mean, Mr. Ciccone. Let me find Mr.

11:35AM 25 Ciccone's --

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11:35AM 1       **THE DEFENDANT:** There's so many things wrong with this  
2 plea agreement. I mean, I'll win. I'll have a good shot on  
3 the appeal so whatever.

4       **THE COURT:** Let me just find Mr. Ciccone's filing. Hang  
11:36AM 5 on just a minute.

6       Mr. Ciccone gives a detailed summary in his statements  
7 about his conversations with you why you allegedly did what  
8 you did and so forth, and your alleged acknowledgement of  
9 poor choices.

11:37AM 10       **THE DEFENDANT:** Was that during the plea?

11       **THE COURT:** (No response.)

12       **THE DEFENDANT:** Are you saying it was during the plea?

13       **THE COURT:** (No response.)

14       **THE DEFENDANT:** What are you referring to right now?

11:37AM 15       **THE COURT:** Mr. Ciccone's statement with respect to  
16 sentencing factors. All right.

17       Clearly indicates a lengthy conversation with you about  
18 the entire matter.

19       So, I, accept probation's representation -- which is the  
11:37AM 20 norm -- that a presentence report was mailed to you at the  
21 jail, both the original report and the amended report. So  
22 I'll make that ruling that you did receive a copy of the  
23 report.

24       Your lawyers -- two lawyers -- have reviewed the  
11:38AM 25 agreement and have no objections to it. So --

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11:38AM 1       **THE DEFENDANT:** I guess just go along with the kangaroo  
2 court.

3       **THE COURT:** Well, don't make me find you in contempt.  
4 You got enough problems. You --

11:38AM 5       **THE DEFENDANT:** Would that postpone the sentencing?

6       **THE COURT:** -- made -- no. Nice try. All right.  
7 So I find that the Guideline range, according to  
8 probation is 100.

9       **THE DEFENDANT:** How's your, how, how -- how are your  
11:38AM 10 vacations going?

11       **THE COURT:** Be quiet. If you keep talking, you're going  
12 to be removed from court which also is not going to stop the  
13 sentencing.

14       The plea agreement, as I said, was a little lower range,  
11:39AM 15 was 92 to 115 months.

16       So I find, after careful review and after listening to  
17 counsel, there are no objections to the Guideline  
18 calculations and since basically they're the same Guidelines  
19 that the parties agreed to two years ago when the plea was  
11:39AM 20 entered and the facts certainly support the Guidelines and  
21 the adjustments.

22       So, I am prepared to proceed to sentencing with formal  
23 sentencing.

24       I must give counsel and Mr. Tyo, if he wishes, a chance  
11:39AM 25 to speak to what the sentence should be.

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11:39AM 1 Mr. Scibetta, I turn the matter over to you first.

2 **MR. SCIBETTA:** Thank you, Judge.

3 Your Honor, it's been my impressions -- and this is not  
4 a popular topic to bring up with Michael -- and I believe the  
11:39AM 5 impressions of Mr. Ciccone, that there are some deep-seated  
6 mental health issues that Michael is struggling with and I  
7 know he touched upon those, Mr. Ciccone did, in his  
8 memorandum with the Court.

9 At the time back in May of '21 when this memorandum was  
11:40AM 10 submitted, it, it concluded -- or just above the conclusion  
11 mentioned that he had been at the time incarcerated over a  
12 year and a half ago, that he wasn't receiving, due to COVID,  
13 appropriate mental health treatment. We're now a year plus  
14 removed from that. That situation has not changed.

11:40AM 15 I personally think there are some untreated mental  
16 health issues with Michael that are, in my opinion, pretty  
17 apparent that's made it difficult to, at times, communicate  
18 with one another, although he's always cordial and fairly  
19 articulate.

11:41AM 20 But I have to concur with Mr. Ciccone's assessment that  
21 Michael is not going to get the kind of treatment from a  
22 Guideline sentence that his particular mental health issues  
23 require. He's still grieving and struggling from the death  
24 of his brother. He's from a broken home, with mental health  
11:41AM 25 issues with both his mom and abandonment issues with his dad,

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11:41AM 1 and substance abuse issues with both, his own substance  
2 abuse, self-medication, suicidal ideologies.

3 I would just implore the Court to take that into  
4 consideration.

11:41AM 5 From all accounts, Michael has had extended periods  
6 where he's sought appropriate treatment and been his old  
7 self, as the letters you've referenced mention. He's a good  
8 guy. He's troubled. He's, he's struggling. And it would be  
9 my hopes that the Court would consider strongly a

11:42AM 10 non-Guideline sentence so that he can get treatment that he  
11 needs because, otherwise, I think, he's going to be a lost  
12 cause. Prison is not going to help him.

13 Thank you.

11:42AM 14 **THE DEFENDANT:** I mean, Ciccone's threatened me to be  
15 moved out of the, out of --

16 **THE COURT:** Mr. Tyo.

17 **THE DEFENDANT:** -- if I didn't sign --

18 **THE COURT:** Mr. Tyo.

19 **THE DEFENDANT:** -- the mental health --

11:42AM 20 **THE COURT:** Mr. Tyo, I'm not sure your lawyer is  
21 finished yet.

22 **MR. SCIBETTA:** I am done. Thank you.

23 **THE COURT:** Thank you.

24 **THE DEFENDANT:** Mr. Ciccone --

11:42AM 25 **THE COURT:** Mr. Tyo --



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11:42AM 1 **THE DEFENDANT:** -- never --

2 **THE COURT:** -- you have a right to speak.

3 **THE DEFENDANT:** I don't have a right to speak  
4 apparently.

11:42AM 5 **THE COURT:** You have a right to speak now.

6 **THE DEFENDANT:** I should be able to file another motion  
7 and take back this plea.

8 **THE COURT:** You have nothing else to say?

9 **THE DEFENDANT:** I just had a meeting with a new lawyer  
11:42AM 10 yesterday.

11 **THE COURT:** But I think the time now is to speak about  
12 sentencing and urge the Court, if you wish, as to what type  
13 of sentence I should impose.

14 We stopped talking about your desire to file yet  
11:43AM 15 another --

16 **THE DEFENDANT:** What does it matter what I have to say?  
17 I've already -- it's the whole vibe has already went to shit  
18 so what the fuck. Anything I say now is just going to look  
19 like me trying to appease you and in reality what's that  
11:43AM 20 going to do? You know, if you want to throw the book at me,  
21 throw the book at me, you know, it's...

22 **THE COURT:** It's your choice, Mr. Tyo. You have a  
23 chance to speak now and if you choose --

24 **THE DEFENDANT:** I should be able to file another motion.  
11:43AM 25 You should give me, like, another 60 days to actually give me

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11:43AM 1 enough time to get a new lawyer so I can file another motion.  
2 Or let this man write another motion with my -- intertwined  
3 with what I actually want to say in it, rather than -- I  
4 didn't -- I wasn't able to really put anything in it that I  
11:43AM 5 really wanted to in the last motion. I wasn't really  
6 included. And I'm not sure if that's his -- I think it was  
7 just the circumstance because for some reason I could not  
8 even get a hold of him. I don't think that's his fault. I  
9 think it's just something wrong with the telephone line. But  
11:44AM 10 every time I try to call, it gives me an indication that it's  
11 a three-way call and somebody else is on. And I'm, in fact,  
12 calling from my debit account. I have money in my debit  
13 account all the time and I can never get a hold of him.  
14 **MR. SCIBETTA:** Judge, I can confirm that Michael has  
11:44AM 15 tried on numerous occasions to get through. Our office  
16 manager gets the call and the call gets terminated on the  
17 jail's end. It --  
18 **THE DEFENDANT:** All I want is a one chance to be able to  
19 submit a motion, a real motion.  
11:44AM 20 **MR. SCIBETTA:** It's like a third-party call.  
21 **THE DEFENDANT:** I'll have new counsel soon enough. I  
22 tried to ask you last time that wasn't going to be enough  
23 time. This was like three weeks or whatever, three and a  
24 half weeks. At that time I thought she was going to come  
11:44AM 25 through. Every indication was that she was going to be my

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11:44AM 1 lawyer. It seems ridiculous and outlandish but it was the  
2 truth.

3 **THE COURT:** Yes, it did.

4 **THE DEFENDANT:** It was the truth.

11:44AM 5 **THE COURT:** Anything else you wish to say?

6 **THE DEFENDANT:** I guess it doesn't really matter what I  
7 have to say but I have so many things I'd like to say.

8 **THE COURT:** But you choose not to, I guess.

9 **THE DEFENDANT:** Is that the choice? Choice to?

11:45AM 10 **THE COURT:** All right. Mr. Tyo, I guess, has finished  
11 what he thinks he'd like to say and there's nothing he wishes  
12 to say further.

13 And if he did wish to say anything further, I would give  
14 him that opportunity now.

11:45AM 15 **THE DEFENDANT:** (No response.)

16 **THE COURT:** But hearing nothing --

17 **THE DEFENDANT:** I suppose I'll just start selling  
18 (phonetic) silence with violence.

19 **THE COURT:** You what?

11:45AM 20 **THE DEFENDANT:** Nothing.

21 **THE COURT:** Probably not the best time to attempt humor,  
22 Mr. Tyo.

23 **THE DEFENDANT:** I mean, humor is all that gets you by  
24 these days.

11:45AM 25 **THE COURT:** All right. Mr. Tyo having completed his

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11:45AM 1 remarks, Ms. Hartford, anything the government wishes to add  
2 to the mix here?

3 **MS. HARTFORD:** Yes, your Honor.

4 Just a few things I want to address since the defendant  
11:45AM 5 has brought them up.

6 As far as the opportunity to file another motion, as the  
7 Court recognized, and would be reflected in the docket in  
8 this case, the motion was filed, arguments were heard on it,  
9 the defendant was present for those arguments. I believe it  
11:46AM 10 was by Zoom but he was present. He did not have any of these  
11 problems with the motion at that time. It was not until  
12 after the Court ruled that he was dissatisfied with the  
13 motion. The Court has been beyond --

14 **THE DEFENDANT:** What was I supposed to do?

11:46AM 15 **THE COURT:** Mr. Tyo.

16 **THE DEFENDANT:** Come up with a theoretical motion --

17 **THE COURT:** Mr. Tyo.

18 **THE DEFENDANT:** -- that some guy entered. Like what was  
19 I supposed to have said?

11:46AM 20 **THE COURT:** Mr. Tyo, you're not doing yourself any good.

21 **THE DEFENDANT:** Just jumping in a kangaroo court.

22 **THE COURT:** Mr. Tyo.

23 **THE DEFENDANT:** That's all the federal courts are.

24 **THE COURT:** Mr. Tyo, you keep interrupting the Court.

11:46AM 25 **THE DEFENDANT:** This whole fucking system is a bunch of

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11:46AM 1 fucking horseshit. That's the whole fucking thing.  
2       **THE COURT:** Mr. Tyo, if you --  
3       **THE DEFENDANT:** You ever see The Dark Knight Rises? You  
4 ever seen that fucking movie?  
11:46AM 5       **THE COURT:** Mr. Tyo, if this continues, I'll have you --  
6       **THE DEFENDANT:** Check that movie out after you -- when  
7 you go on your next vacation.  
8       **THE COURT:** Mr. Tyo.  
9       **THE DEFENDANT:** All right?  
11:47AM 10       **THE COURT:** Mr. Tyo.  
11       **THE DEFENDANT:** And have a good leisurely stroll.  
12       **THE COURT:** Mr. Tyo, you're going to be removed from  
13 court. If you want that to happen --  
14       **THE DEFENDANT:** Where would I go after that? Just like  
11:47AM 15 an undisclosed location where you can, you know, torture  
16 people and shit?  
17       **THE COURT:** Mr. Tyo, it's in your best interest just to  
18 remain silent, let the prosecutor finish, and I will do my  
19 sentence and --  
11:47AM 20       **THE DEFENDANT:** Well, she -- I can't present an argument  
21 to her fucking bullshit? Or horseshit?  
22       **THE COURT:** Mr. Tyo, I'll give you one last warning.  
23 Please remain silent or you're going to be removed from  
24 the court and give up your right to be present in court.  
11:47AM 25       **THE DEFENDANT:** Where do I go after that?

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11:47AM 1       **THE COURT:** You go into the jail there. You go back to  
2 Monroe County.

3       **THE DEFENDANT:** And what happens?

4       **THE COURT:** And you can tell all the people how we  
11:47AM 5 treated you badly over here. I don't care where you go.

6 Do you wish to stay here and hear the sentence or --

7       **THE DEFENDANT:** No, I don't want to hear the sentence.  
8 I think this is a bunch of fucking crap.

9       **THE COURT:** All right. I ask the Marshals to remove  
11:48AM 10 Mr. Tyo. He's given up his right to participate in the  
11 proceedings by repeated interruptions, vulgar comments that  
12 could be taken as threats to the Court. And I order him  
13 removed.

14 (WHEREUPON, defendant removed from courtroom.)

11:48AM 15       **THE COURT:** I think the record speaks for itself but  
16 Mr. Tyo repeatedly interrupted the Court after numerous  
17 warnings and also has interrupted Ms. Hartford and has given  
18 very strong vulgar language as to his opinion of the  
19 proceedings here.

11:48AM 20 And I'll speak to the mental health issue in a minute.  
21 So, Ms. Hartford, I guess you have the floor.

22       **MS. HARTFORD:** Thank you, your Honor.

23       **THE COURT:** If you wish.

24       **MS. HARTFORD:** I'll try to be brief because at this  
11:49AM 25 point the matter's been pending for a long time. The court's

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11:49AM 1 familiar with the facts of the case.

2 **THE COURT:** Quite.

3 **MS. HARTFORD:** However, I don't want to use today's  
4 length of the proceeding as a reason to not respond.

11:49AM 5 So thank you, Judge.

6 I think I was just saying that there was a hearing. The  
7 defendant had the opportunity at that hearing to raise any  
8 grievances he had with the motion. He didn't do so, at least  
9 to the government's recollection. It wasn't until after the  
10 ruling that he claimed that the motion was not satisfactory  
11 to him, which, I guess we'll move on from.

12 He's been, in the government's opinion, somewhat  
13 manipulative throughout this entire process in trying to  
14 obtain a result that he finds more favorable.

11:49AM 15 I'll note that he has -- well, I'm just going to move  
16 forward with my request for sentencing, Judge.

17 **THE COURT:** Sure.

18 **MS. HARTFORD:** In a sentencing statement filed on  
19 March 11th of 2021, the government noted that we are bound by  
20 the Guidelines calculation made in the plea agreement and to  
21 advocate for that as the Guidelines range.

22 The overlapping range of the Guidelines would be between  
23 100 and 115 months. But as the Court noted, and the defense  
24 noted in their sentencing statement as well, that the  
11:50AM 25 government is allowed to advocate for a sentence outside of

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11:50AM 1 the Guidelines range. That may be appropriate in this case,  
2 Judge. I will leave it to the Court's discretion.

3 But the reasons why the government believes that a  
4 lengthy sentence is appropriate and necessary in this case is  
11:50AM 5 because this defendant is no stranger to the criminal justice  
6 system. He has a extremely lengthy criminal history and very  
7 high criminal history score for most defendants I see in  
8 federal court, but particularly for somebody who is only 34  
9 years old. He's had other opportunities to change his  
11:51AM 10 behavior and has not done so.

11 These, these crimes, themselves, are not victimless  
12 crimes, the bank robberies. There are tellers who are  
13 affected. And the Court has presided over more of these  
14 cases than I've handled but these kinds of crimes do have  
11:51AM 15 consequences.

16 Reading from the first letter from the first robbery  
17 just portions of that, he said: "If I even glimpse a dye  
18 pack, I will not hesitate to elevate the situation and you  
19 will be the first casualty."

11:51AM 20 Later, in that letter he says: "If I happen to get  
21 caught because of you, when I get out of prison, I will  
22 systematically destroy you and the people you love the most."

23 And, frankly, your Honor, that's been echoed a bit as  
24 far as threatening language and retaliation as far as even  
11:51AM 25 the language that you heard from the defendant today.



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11:51AM 1 I see no change in his demeanor, no willingness to do  
2 better, no -- no acceptance that after this, things are going  
3 to be different. In fact, he has only demonstrated to the  
4 Court that when things don't go his way, he will elevate the  
11:52AM 5 situation.

6 And for all those reasons, I believe that a lengthy  
7 sentence is appropriate to accomplish the factors in  
8 Title 18, Section 3553(a), that is, taking into consideration  
9 the nature and circumstances of the offense; the history and  
11:52AM 10 characteristics of the defendant; the need for the sentence  
11 imposed to reflect the seriousness of the offense; to promote  
12 respect for the law -- which I argue the defendant has none,  
13 less than none, if that's possible -- and to provide just  
14 punishment for the offense; as well as to afford adequate  
11:52AM 15 deterrence to criminal contact; to protect the public from  
16 further crimes of the defendant; and to provide the defendant  
17 with needed educational or vocational training, medical care  
18 or other correctional treatment in the most effective manner.

19 And, Judge, being out of custody hasn't gotten him any  
11:53AM 20 of that treatment. He went to robbing banks and these  
21 extremely violent threatening letters. Perhaps the federal  
22 Bureau of Prisons is the only place where he will get that  
23 treatment.

24 So, thank you, your Honor.

11:53AM 25 **THE COURT:** Thank you.

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11:53AM 1 Mr. Scibetta, anything else in light of the departure of  
2 your client in response to Ms. Hartford or are we ready to  
3 proceed?

4 **MR. SCIBETTA:** Judge, I would just suggest that he's not  
11:53AM 5 getting the treatment he needs. I don't know if he's  
6 inappropriately or under or not medicated at all but he  
7 strikes me as an individual that is certainly not at his best  
8 mentally today.

9 **THE COURT:** Well, certainly not what the Court would  
11:53AM 10 expect here. And this is consistent, somewhat, with Mr.  
11 Tyo's behavior throughout the case. Although early on, you  
12 know, he was respectful. There were no problems when the  
13 plea was taken.

14 So, I will turn to sentence.

11:54AM 15 You know, Mr. Tyo presents several sort of intersecting  
16 issues and behavior. It's not often I see people that are  
17 convicted of virtually within a week or so, robbing two banks  
18 and attempting to rob a third.

19 And Ms. Hartford accurately described the threatening  
11:54AM 20 letters that he gave to tellers. This was a pretty planned  
21 robbery scheme, as I recall. There was presentence reports,  
22 some people observed him changing clothes and he got some  
23 money out of this.

24 The Court has to consider all the sentencing factors  
11:55AM 25 that Ms. Hartford mentioned. And we might trip through some

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11:55AM 1 of them because I think they speak to what the sentence  
2 should be here.

3 In terms of the nature and circumstances of the  
4 offenses, you know, bank robberies, threatening tellers is  
11:55AM 5 about as serious as you can get. There's a 20-year max for  
6 each count. You know, that, in itself, I think, warrants a  
7 significant punishment.

8 The history and characteristics of the defendant. He is  
9 a young man. He's had some college. He has some talent as a  
11:55AM 10 writer. But at that very young age, he has the highest  
11 Criminal History Category: VI.

12 And he keeps mentioning -- I mean, if he were here, I  
13 would tell him he seems to blame, you know, the breakup of  
14 his parents, the death of his brother. Certainly the death  
11:56AM 15 of a sibling is tragic but that happened, I think, 11 months  
16 before this bank robbery spree.

17 Some of the crimes on Mr. Tyo's record have aspects of  
18 violence. He was on parole when this happened. He still has  
19 pending state charges. I don't know what's going to happen  
11:56AM 20 to them.

21 And he has heavy drug abuse history, cocaine, marijuana,  
22 opiates. He has been afforded numerous treatment programs  
23 and he's failed out or booked out of all of them.

24 And, frankly, the same thing has happened with mental  
11:57AM 25 health treatment. He's been diagnosed with depression,

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11:57AM 1 anxiety, bipolar disorder. But as I review the presentence  
2 report, he's never completed a mental health treatment  
3 program because he doesn't like group settings. He wants to  
4 have a private consultation.

11:57AM 5 Pretty much Michael Tyo does what he wants to do. He  
6 didn't want to come to court today, either. That's sort of  
7 consistent with his behavior. If he wants to do something,  
8 even if it's robbing a bank, he does it.

9 Part of the sentence must be for deterrence, also.  
11:57AM 10 People, because they are upset, need money, they just can't  
11 go down to the local bank and threaten tellers and rob the  
12 banks.

13 You know, if I thought a sentence directing him to  
14 engage in mental health treatment would end this behavior, I  
11:58AM 15 would probably do it. But it's not going to work. I mean,  
16 he just doesn't seem to have the ability to make good  
17 judgments and accept the help that's been offered to him. I  
18 mean, I often have to represent there's serious consequences  
19 for criminal conduct, consequences for threatening people.

11:58AM 20 You know, Michael doesn't seem to realize that if he has  
21 problems, it's not his job to take it out on others. He's  
22 done nothing really to justify a lenient sentence and direct  
23 that he participate in mental health problems. You know,  
24 life is hard. There are difficult things to deal with. He  
11:59AM 25 seems to have issues with his parents and the death of his

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11:59AM 1 brother.

2 But there's this sort of pattern of blaming everybody

3 else now -- including this Court -- as to how unfairly he's

4 been treated. I think he's been treated very fairly. He has

11:59AM 5 tried to put off this sentencing for quite a while.

6 Just for the record, the report today was that he

7 refused the jail letter's request to come over here.

8 Claiming, quote, he didn't feel well. Well, the Court issued

9 an order to bring him over here and I didn't see much signs

11:59AM 10 of his physical ailment.

11 I think getting him in a Bureau of Prisons facility,

12 he's apt to get much more mental health, the potential for

13 it, much more than if he's sitting here in a local jail.

14 So, is Mr. Tyo a lost cause? If he were here, I would

12:00PM 15 say, you know, you're 33 now, do you want to live to be 43?

16 If he keeps up the way he's going to, refuses help and

17 treatment, I fear the worst.

18 But, unfortunately, he doesn't just have some mental

19 health issues. He has drug issues and he has real propensity

12:00PM 20 to use violence when it suits his interest. I think these

21 bank robberies are symbolic in that. I think he's threatened

22 people in treatment facilities.

23 And, so, to the extent there's a request for a departure

24 from the Guidelines, I would deny that.

12:01PM 25 And I hereby impose the following sentence: There are

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12:01PM 1 three counts and each count, I impose a sentence of 100  
2 months to run concurrently with each other for a total  
3 aggregate sentence of 100 months.

4 I don't know if he wishes his sentence to be served at a  
12:01PM 5 facility in any place in particular, Mr. Scibetta? How about  
6 close to this district?

7 **MR. SCIBETTA:** I would put that request in, Judge. His  
8 mom is in the area.

9 **THE COURT:** All right. I will request that he serve his  
12:01PM 10 sentence as close to the Western District of New York as  
11 possible.

12 I'm going to place him on supervised release for 3 years  
13 on each of the counts to run concurrently.

14 While on that release, he's not to commit any new,  
12:01PM 15 federal, state or local crime.

16 He's prohibited from possessing a firearm.

17 Prohibited from possessing any controlled substance.

18 Drug testing is required.

19 And he must cooperate in the DNA sample.

12:02PM 20 There were six recommendations of special conditions.  
21 And they're all important. And I adopt them all.

22 Number one, that he participate in a program for  
23 substance abuse, including testing and treatment, and I adopt  
24 the exact language in that recommendation of special  
12:02PM 25 condition one.

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12:02PM 1 I adopt the condition, I think it's listed as number six  
2 in the special conditions, that he notify probation of any  
3 opiate-based medication before it's filled.

4 Request number two is that he participate in mental  
12:02PM 5 health treatment. That is most important. And I adopt the  
6 specific language set forth in the probation department's  
7 special recommendation. It's my fervent desire that he take  
8 that seriously and participate in it.

9 Recommendation number three, I adopt that language.

12:03PM 10 Recommendation number four, that he must provide  
11 probation with access to any personal or financial  
12 information because there's restitution payment that's going  
13 to be ordered.

14 Recommendation number five is that he not incur any form  
12:03PM 15 of debt as set forth there in the recommendations for special  
16 conditions.

17 I find he has no ability to pay a fine because any  
18 monies that he has would go toward restitution.

19 I hereby order restitution under the factors of  
12:04PM 20 Section 3664(a).

21 He's to make restitution to the Citizens Bank located at  
22 South Clinton Avenue in Rochester in the amount of \$800.

23 And also another \$1,800 restitution payment to a  
24 different Citizens Bank located South park Avenue in Buffalo.

12:04PM 25 He's to make those payments according to the Bureau of

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12:04PM 1 Prisons Financial Responsibility Program. And if he doesn't  
2 complete the restitution by the end of his sentence, it's to  
3 be made at a rate of at least 10 percent of his monthly gross  
4 income, should there be any when he is released.

12:04PM 5 There probably is a complaint that needs dismissing.

6 **MS. HARTFORD:** Yes, your Honor.

7 I would move to dismiss the complaint.

8 Also, did the Court -- I may have missed it -- did you  
9 order the special assessment of \$300?

12:05PM 10 **THE COURT:** About to do that.

11 **MS. HARTFORD:** Sorry, Judge.

12 **THE COURT:** I order a \$100 special assessment on each of  
13 the counts for a total of \$300.

14 That is the sentence of the court.

12:05PM 15 And the plea agreement did provide for a giving up or  
16 waiver of the right to appeal, as long as the sentence was  
17 within the Guideline range. This sentence of 100 months is  
18 squarely within the middle of the range anticipated in the  
19 plea agreement. But, you know, there has been a motion to  
12:05PM 20 withdraw the sentence, and that may well afford him the  
21 ability to complain and appeal about that.

22 So, Mr. Scibetta, I trust you will take what steps, to  
23 the extent you can glean what your client wants, must be  
24 filed within the next 14 days.

12:06PM 25 It doesn't necessarily mean you have to represent him on



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12:06PM 1 appeal. But if you wish to get out of that because the  
2 Circuit tends to like point at counsel to stay on for appeal.  
3 If you can't or won't do it do it, the Circuit certainly has  
4 many lawyers that they can appoint to represent Mr. Tyo. And  
12:06PM 5 who knows, he may at some point, as he did with Mr. Ciccone,  
6 decide to turn against you.

7 So, please protect his interest with the appeal and if  
8 you can't, I'll file the appeal for him.

9 **MR. SCIBETTA:** Thank you, Judge.

12:06PM 10 **THE COURT:** Because it is within the waiver agreement, I  
11 mean, I don't know what the Second Circuit would do relative  
12 to any appeal. All right.

13 I mean, it's an unhappy situation regardless. He  
14 certainly has engaged in very dangerous serious conduct but  
12:07PM 15 he's obviously has some mental health issues and needs  
16 possibly medication.

17 If there's nothing further, thank you.

18 **MS. HARTFORD:** Thank you.

19 **PROBATION OFFICER FISH:** Judge, I actually do have two  
12:07PM 20 quick things.

21 Does the Court wish to order the statutory language  
22 under 18 U.S.C. 3664(n) regarding the restitution while  
23 incarcerated. That language was in the recommendation.

24 **THE COURT:** No, I think what I said was enough.

12:07PM 25 **PROBATION OFFICER FISH:** And the second. I may have

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missed this. Did the Court order DNA testing?

**THE COURT:** Yes.

**MR. SCIBETTA:** I believe so.

**PROBATION OFFICER FISH:** Thank you, Judge.

**THE COURT:** Thank you, all.

We are in recess.

(WHEREUPON, proceedings adjourned.)

\* \* \*

**CERTIFICATE OF REPORTER**

In accordance with 28, U.S.C., 753(b), I  
certify that these original notes are a true and correct  
record of proceedings in the United States District Court  
of the Western District of New York before the  
Honorable David G. Larimer on July 7, 2022.

S/ Diane S. Martens

Diane S. Martens, FCRR, RPR  
Official Court Reporter